

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3260 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MUJFAR AJABKHAN PATHAN

Versus

STATE OF GUJARAT

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Appearance:

Mr.Prajapati for M/S THAKKAR ASSOC. for Petitioner  
MR KC SHAH, A.G.P., for respondents

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 02/09/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 11.3.1996 rendered by respondent No.2 u/s.3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985), hereinafter referred to as "the PASA Act."

It may be noted that the petitioner was actually detained on 1st April 1996.

2. The grounds on which the impugned order of detention has been passed appear at Annexure : B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of storing and selling foreign liquor and following prohibition offences have been registered in the Maninagar Police Station against him :-

CR No. 110/95 U/ss. 66B, 65A,E & 81 of Bombay Prohibition Act with Sec. 120(B) of the IPC. 15096 bottles of foreign liquor amounting to Rs.12,03,820/- with cash amount of Rs.38,000/- and Maruti Van of Rs.1,70,000/-. The matter is pending in the Court.

It is the stand of the petitioner that he was not named in the aforesaid CR although in the description of the allegation of facts comprising the offences the petitioner's name appears. To this, it is submitted on behalf of the State Government that the petitioner was not available and was not traceable. It has further been submitted on behalf of the petitioner that all the accused persons, who were alleged to have been found at the time of raid, have been acquitted from the offences with which they were charged in the aforesaid CR. It has been finally submitted that the case against the petitioner is pending and he has been enlarged on bail during the pendency of this petition and that he has good chance of being acquitted of the same offences charged against him for the simple reason that the whole panchnama on which the offences have been based has failed on account of the panchas turning hostile.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 5th February 1996 and second occurring on 22nd February 1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place with knife leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of

detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned Advocate for the petitioner and the learned A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :

Mustakmiya Jabbarmiya Shaikh V/s. M.M.Mehta,  
C.P., reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in Paras : 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. What has been said by the Apex Court in paras 11 & 12 of Mustakmiya's case (Supra) has been relied upon on behalf of the petitioner.

The subjective satisfaction of the detaining authority based on the said case would be vitiated in view of Mustakmiya's case (Supra) and the decision in Piyush Kantilal Mehta V/s. Police Commissioner, reported in 1989 Suppl. (1) SCC 322, where there were two prohibition cases each concerning 21,795 ml. ltrs. of foreign liquor and 1,39,750 ml. ltrs. of foreign liquor. It is, therefore, submitted that the statements of the witnesses recorded in the present case with regard to two incidents are too general and related to individual incidents affecting law and order situation. In my opinion such statements cannot be said to bring out facts as would affect public order. The incidents are less grave in nature than the incidents quoted in paras : 11 and 12 in Mustakmiya's case, which are reproduced as under :

"This brings us to the criminal activities of the detenu-petitioner which are said to have taken place on 10.8.1994 at 4.00 p.m. and on 12.8.1994

at 7.00 p.m. In the incident dated 10.8.1994 the petitioner is alleged to have purchased goods worth Rs.500/- from a businessman and on the demand of the price of the goods, the petitioner is alleged to have dragged him out on the public road and not only gave a beating to him but also aimed his revolver towards the people gathered over there. Similarly, it is alleged that on 12.8.1994 at about 7.00 p.m. the detinue-petitioner stopped the witness on the road near the eastern side of Sardar Garden and beat him as the petitioner doubted that he was informing the police about the anti-social activities of the petitioner and his associates. The petitioner is also alleged to have rushed towards the people gathered there with the revolver. Taking the aforesaid two incidents and the allegations on their face value as they are, it is difficult to comprehend that they were the incidents involving public order. They were incidents directed against single individuals having no adverse effects prejudicial to the maintenance of public order, disturbing the even tampo of life or the peace and tranquillity of the locality. Such casual and isolated incidents can hardly have any implications which may affect the even tampo of life or jeopardize the public order and incite people to make further breaches of the law and order which may result in subversion of the public order. As said earlier, the act by itself is not determinant of its own gravity but it is the potentiality of the act which matters.

12. The alleged incident dated 12.8.1994 relating to the beating of some person on suspicion that he was informing the police about criminal activities of the petitioner, the allegation is sweeping without any material to support it. Neither any timely report appears to have been made about it to the police nor any offence appears to have been registered against the detinue-petitioner concerning the said incident. There remains the solitary incident dated 10.8.1994 pertaining to the alleged beating of a businessman which as said earlier directly was against an individual having no adverse impact on public at large. Besides, the solitary incident dated 10.8.1994 alone would not provide a justification to hold that the petitioner was habitually committing or attempting to commit or

abetting the commission of offences as contemplated in Sec.2(c) of the Act because the expression 'habitually' postulates a thread of continuity in the commission of offence repeatedly and persistently. However, in our considered opinion none of the aforementioned two incidents can be said to be incidents affecting public order nor from these stray and casual acts the petitioner can be branded as a dangerous person within the meaning of Sec. 2(c) of the Act, who was habitually engaged in activities adversely affecting or likely to affect adversely the maintenance of public order. Similar is the position with regard to recovery of .32 bore country-made revolver from the possession of the petitioner without any permit or licence which is an offence under Sec.25 of the Arms Act. The said revolver was found to be rusty and had a broken barrel. Mere possession of a firearm without anything more cannot bring a case within the ambit of an act affecting public order as contemplated in Sec. 3 of the Act unless ingredients of Sec. 2(c) of the Act are also made out. From the facts discussed above it turns out that there was no material which may lead to a reasonable and definite conclusion that the detenue-petitioner was habitually engaged in criminal activities and, therefore, a dangerous person. The detaining authority thus passed the impugned order of detention against the petitioner without application of mind on the aforesaid aspects of the case and, therefore, the detention order could not be sustained."

7. Mr.K.C.Shah, learned A.G.P. for the State has in reply referred to an earlier decision of the Apex Court in the case of Mrs.Harpreet Kaur Harvinder Singh Bedi V. State of Maharashtra & Anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs.Harpreet Kaur's case (supra) would not be applicable.

One of the co-accused was detained under the detention order dated 22.3.1996 and he had filed Special Civil Application No.3258 of 1996. However, the facts alleged against the said accused and the facts alleged against the present petitioner show some difference. Even then since his case was found to have been covered under the decision of the Apex Court in Mustakmiya's case (supra), there is no reason why the petitioner, bearing in mind the peculiar facts of his case noted hereinabove,

be not given benefit of the ratio in Mustakmiya's case (supra).

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (Supra), it is not necessary to deal with the other grounds. Hence, following order is passed :

The impugned order of detention is hereby quashed and set aside. The petitioner detenu - Majfar Ajabkhan Pathan shall be forthwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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